



ETHICS & LOBBYING EDUCATION FOR PUBLIC SERVANTS

WHAT YOU NEED TO KNOW TO COMPLY WITH NC'S
STATE GOVERNMENT ETHICS ACT & LOBBYING LAW

October 2011

What if.....

You arrive at your office
and find an ink pen in a
box in your chair.

Can you keep it?



What if....

You've been invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

If so, can you eat and drink?



3

What if...

You are a public servant and your husband owns a business which will financially benefit from a proposed rule change or policy that is scheduled to be voted on by the state board you sit on.

Can you participate in the discussion of the proposed rule change?




4

Can you vote on it?

Did you know that...

Anyone can file a complaint against you for allegedly violating the State Government Ethics Act.

Violations of the Ethics Act may result in your being removed from your public position.

	Official Use Only Date Received _____ Case Number _____ Type of Official _____
STATE ETHICS COMMISSION COMPLAINT FORM	
<p>The State Ethics Commission has the authority to investigate complaints against those persons covered by Chapter 138A, North Carolina General Statutes, "The State Government Ethics Act," for alleged violations of the Act. Please see section 138A-12 of the Act. This complaint must be filed within two years of the date you, the Complainant, knew or should have known of the conduct upon which this complaint is based. Please note that the Ethics Commission does NOT have jurisdiction over all public officials or state employees.</p>	
CONTACT INFORMATION <i>(Please Type or Print clearly)</i>	
<p>The Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Commission cannot accept anonymous complaints.</p>	
Printed Name: _____	
Address: _____	
(City) _____	(State) _____ (Zip) _____
Telephone No: (____) _____	

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ETHICS LAWS & POLICIES...

State Govt. Ethics
Act & Lobbying
Law

State & Federal Laws



Agency Policies

Executive Orders

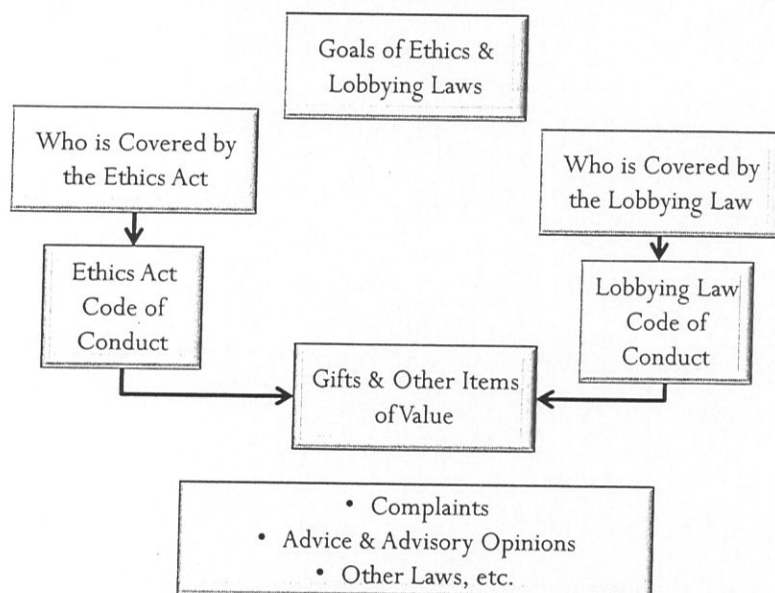
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GOALS OF EDUCATION PRESENTATION

- Give you a *broad overview* of State Government Ethics Act & Lobbying Law
- Help you understand *your obligations* under these laws
 - Duties
 - Prohibitions
- Inform you of the *consequences* for violations
- Tell you where & how to get *advice*

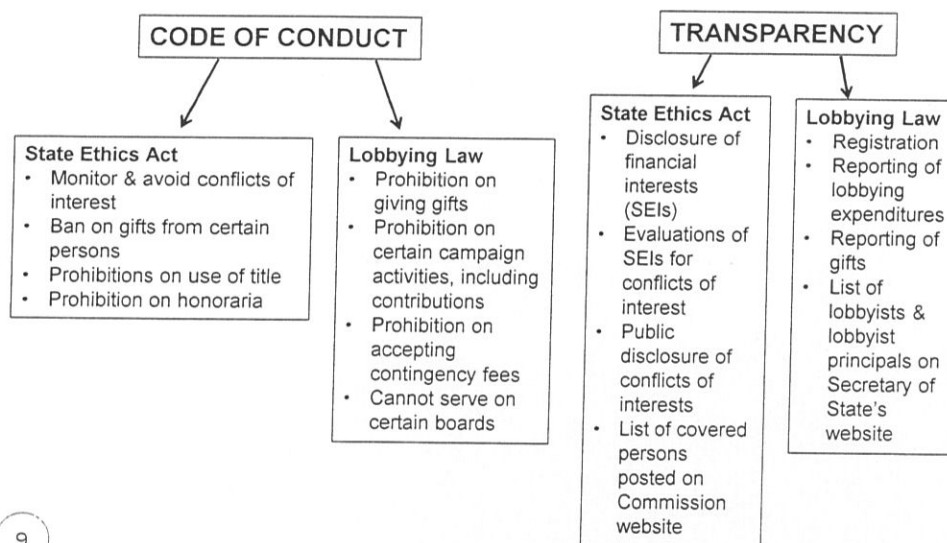
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OVERVIEW OF PRESENTATION



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GOAL OF ETHICS LAWS: CODE OF CONDUCT & TRANSPARENCY



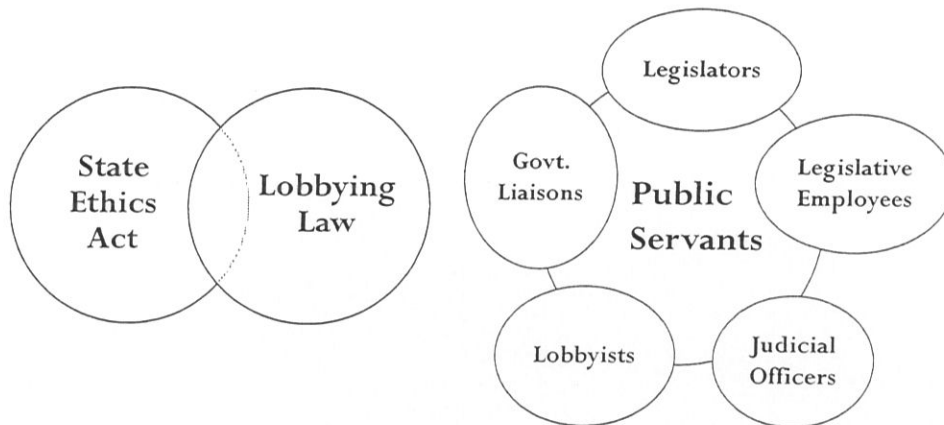
WHO IS COVERED:

ETHICS ACT & LOBBYING LAW

ETHICS & LOBBYING LAWS

SOME PROVISIONS OVERLAP

SOMEONE CAN SERVE IN MORE THAN 1 POSITION



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WHO IS COVERED BY THE STATE ETHICS ACT?

LEGISLATIVE



- Legislators
- Legislative Employees

JUDICIAL "Judicial Officers"



- Supreme Court Justices
- Court of Appeals Judges
- Superior & District Court Judges
- District Attorneys
- Clerks of Court
- AOC employees who are covered are "public servants"

EXECUTIVE "Public Servants"



- Governor
- Lt. Governor
- Council of State
- Cabinet Secretaries
- Governor's office employees
- Policy-making positions chief deputies, confidential assistants
- Certain managerial positions
- Others designated by Governor
- Certain UNC & community college officials, Board of Governors & boards of trustees members
- Voting members of State non-advisory boards

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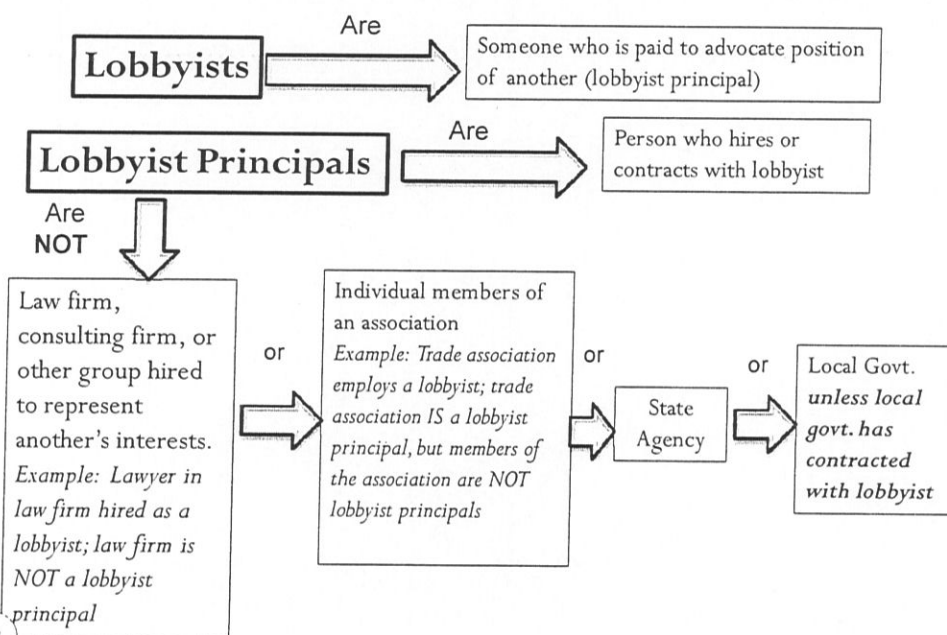
STATE ETHICS ACT: Who is NOT Covered?

State Ethics Act does NOT apply to

- **All State employees**
 - Other ethical codes of conduct, including executive orders, or laws may apply
- **Local government board members or employees (e.g., county commissioners)**
 - Other laws apply
 - Local governments must adopt a code of ethics (*G.S. 160A-83*)
- **Members of advisory boards**, i.e., those that make only recommendations to a final decision-maker
 - Other ethical codes, including executive orders, may apply

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WHO IS COVERED BY THE LOBBYING LAW?

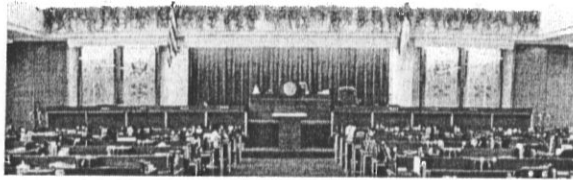


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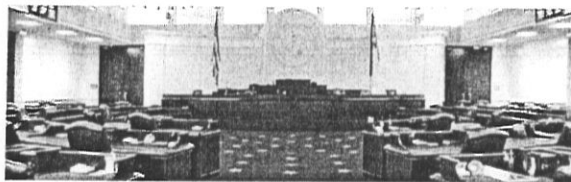
WHO ARE...
Governmental
Liaisons/
"Liaison Personnel"?

State or local
government
employees whose
principal duties
include lobbying
legislators or
legislative employees

NC House of Representatives



NC Senate



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ETHICS ACT CODE OF CONDUCT

DUTIES

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1. *File* disclosure of economic & other interests
("Statement of Economic Interest" or "SEI")
2. *Attend* ethics education
3. *Monitor & avoid* conflicts of interest
4. *Agency heads* have additional duties



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FILE DISCLOSURE: STATEMENTS OF ECONOMIC INTEREST (SEIs)


FILING

- **WHO** has to file?
- **WHAT** has to be disclosed?
- **WHEN** is it due?

FILING TIPS

PENALTIES

EVALUATIONS


NORTH CAROLINA STATE ETHICS COMMISSION
2011 STATEMENT OF ECONOMIC INTEREST
 919-715-3071 www.ethicscommission.nc.gov

COMPLETE THIS FORM AND MAIL, WEARD, OR E-MAIL IT TO:
STATE ETHICS COMMISSION, 1104 MAIL SERVICE CENTER, RDU FIRM, NC 27609-1104

1. STATEMENT TYPE (SELECT ONE)				
<input type="checkbox"/> NEW	Deadline for Filing Statement of Economic Interest			
<input type="checkbox"/> RENEWED	Newly Appointed/ Employed: Generally prior to your appointment/employment All Others: Generally April 15 of current year			
2. FILER'S NAME (FIRST, MIDDLE, LAST)				
First Name	Middle Name	Last Name	Suffix	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
3. MAILING ADDRESS, CITY, STATE, ZIP+4				
Address 1	Address 2	City	State	ZIP
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
4. EMPLOYER		5. TITLE OR POSITION SOUGHT		
<input type="text"/>		<input type="text"/>		
6. DAYTIME PHONE NUMBER (10-digit number no spaces, no characters)		7. ALTERNATE PHONE NUMBER (10-digit number no spaces, no characters)		
<input type="text"/>		<input type="text"/>		

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WHO must file?

- Generally, most everyone covered by the State Ethics Act
- Candidates for election to covered offices
- Former elected officials in covered offices must file year after leaving office.

Exceptions:

- Covered State employees making less than \$60,000
- Voting student members of university & community college boards of trustees

Executive Branch
Public Servants



Legislative Branch
Legislators



Judicial Branch
Judicial Officers



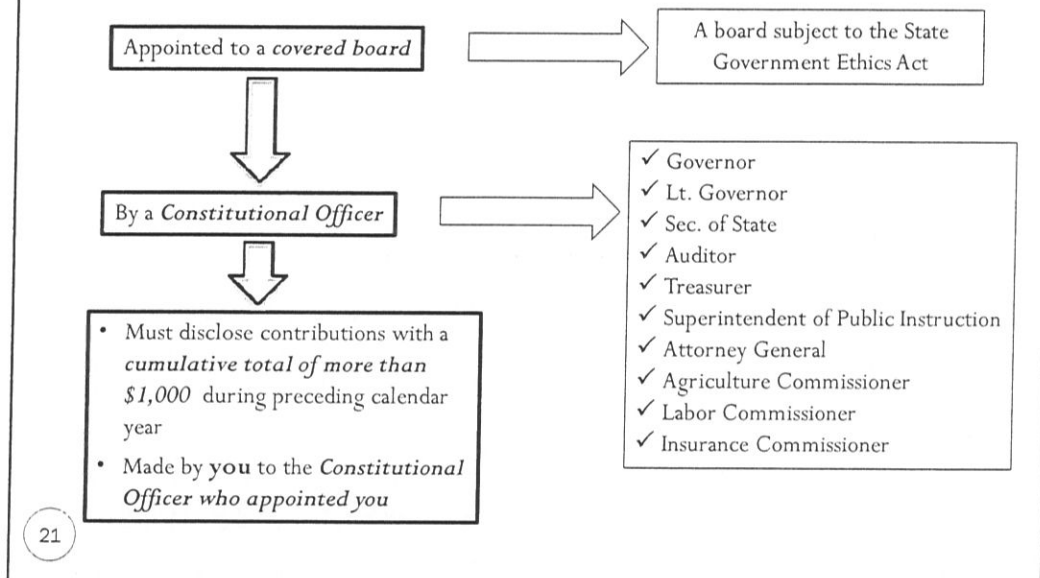
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WHAT has to be disclosed?

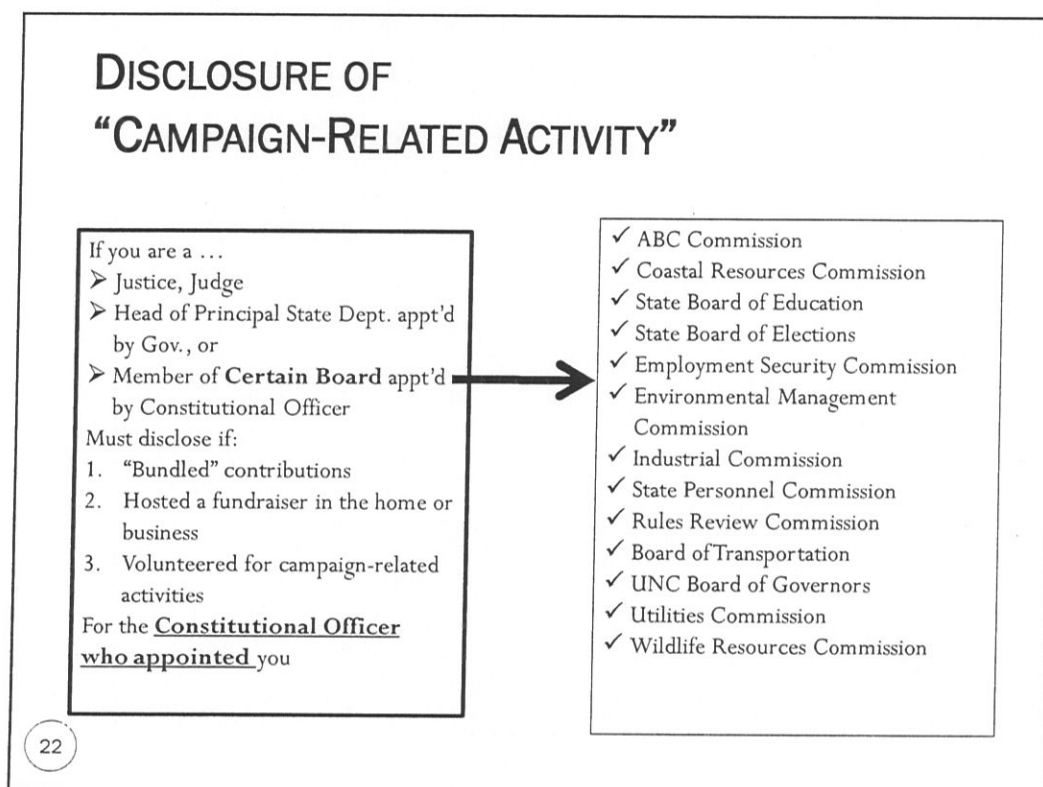
- Certain financial, professional & personal information about you and your *immediate family*:
 - Spouse unless legally separated
 - Unemancipated children living in your household
 - Members of your “extended family” who live with you, including
 - You and your spouses lineal ascendants & descendents (great grandparents, grandparents, parents, children, grandchildren, great grandchildren, etc.), siblings, AND the spouse of any of the above

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DISCLOSURE OF CERTAIN CAMPAIGN CONTRIBUTIONS



DISCLOSURE OF "CAMPAIGN-RELATED ACTIVITY"



WHEN is the SEI filing due?

INITIAL

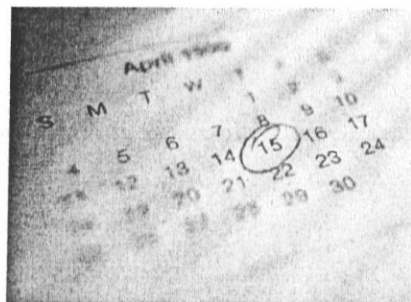
Generally, SEI must be filed & evaluated before you can begin serving on the covered board or in the covered position

- **Exception: Provisional Appointments by Universities & Community Colleges.** SEI must be filed but does not have to be evaluated prior to assuming covered position
- **Exception: Appointees or employees hired by Constitutional Officers during the first 60 days of Constitutional Officer's term**

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ANNUAL

ANNUAL FILING DEADLINE
APRIL 15TH



SEI FILING TIPS

- Forms available on website:
www.ethicscommission.nc.gov
- Answer *all* questions
- *Sign* your form
- Keep a *copy*
- Mail or hand-deliver the *original*

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A filing person who knowingly contains or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 136A-45. (1995-201, s. 1.)

§ 136A-77. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class 1 felony and shall be subject to disciplinary action under G.S. 136A-45. (2004-201, s. 1.)

☒ I Agree ☐ I Disagree

John Smith PRINTED NAME **Notarization is no longer required.**

John Smith SIGNATURE No later than April 15th DATE

Submit SIGNED, ORIGINAL documents

CHANGES TO SEI

CORRECTIONS

- If you forget to disclose or need to correct something, notify the Ethics Commission as soon as possible

CHANGES DURING YEAR

- Once SEI is properly completed and filed, you are not required to update or supplement during the year
- Account for any changes on next year's filing

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SEI VIOLATIONS

CIVIL PENALTY FOR LATE OR NON-FILING

- \$250 civil penalty
- May result in removal from public position



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CRIMINAL PENALTIES

- **Class 1 misdemeanor** for knowingly concealing or failing to disclose
- **Class H felony** for knowingly providing false information



SEI EVALUATIONS

- ✓ Public servant SEIs are evaluated for "actual & potential conflicts of interest"
- ✓ Having a conflict does not mean you cannot serve
- ✓ May require you to recuse yourself
- ✓ Failing to eliminate a disqualifying conflict of interest or resign
 - May be removed from public position
- ✓ *Evaluation letters help you identify areas where need to exercise caution*

SEI & evaluation letter are public records!

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ATTENDING ETHICS EDUCATION

- **Initial.** All public servants & ethics liaisons must attend initial ethics education presentation within 6 months of assuming position
- **Refresher.** Must attend a refresher presentation at least every 2 years thereafter
- **Live or Online**
- **Violation Consequences.** Failure to attend is violation of State Ethics Act & may result in disciplinary action

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MONITORING & AVOIDING CONFLICTS OF INTEREST

- Must make due & diligent effort to identify conflicts of interest prior to taking any action or participating in discussions
- Must also continually monitor, evaluate, & manage personal, professional, and financial affairs for conflicts of interest

Periodically review SEI
Evaluation Letter

Review board's agenda prior
to meeting

Discuss with legal counsel

Review Ethics Act Conflict of
Interest materials in this
handout

Duty to ask State
Ethics Commission if
unsure

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ADDITIONAL DUTIES FOR AGENCY HEADS

- Includes Board chairs
- Take active role in furthering ethics & ensuring compliance
- Be familiar with Commission's opinions, rules, newsletters, etc.
- Remind board members of their duty to avoid conflicts of interest & ensure conflicts of interest are recorded in the board's minutes
- Ensure legal counsel are familiar with the ethics law
- Consider the need for customized ethics education programs
- Notify Commission of changes in public servants
- Designate Ethics Liaison

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ETHICS ACT CODE OF CONDUCT

PROHIBITIONS: CONFLICTS OF INTEREST

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CONFLICTS OF INTEREST

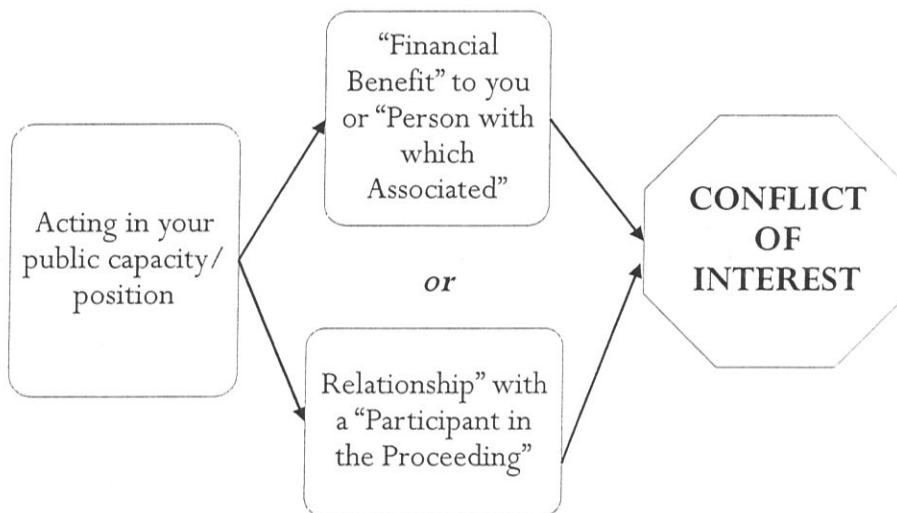
*"Remember which hat you're
wearing"*



- I. WHAT IS A CONFLICT OF INTEREST under the State Ethics Act?
 1. Financial benefit
 2. Relationship with participant in the proceeding
- II. Are there any "SAFE HARBORS" that allow participation?
- III. WHAT TO DO if you have a conflict

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Generally, if you are...



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CONFLICT OF INTEREST: FINANCIAL BENEFIT – QUESTIONS TO ASK

1. Am I taking an *"official action"*?

Any decision, including administration, approval, disapproval, preparation, recommendation, rendering of advice, and investigation **made or contemplated in any** proceeding, application, submission, request for ruling or other determination, contract, claim, controversy, investigation, charge, or rule-making.



2. *Who* benefits?

- You; or
- "Person with which associated"



3. Is it a *"financial benefit"*?

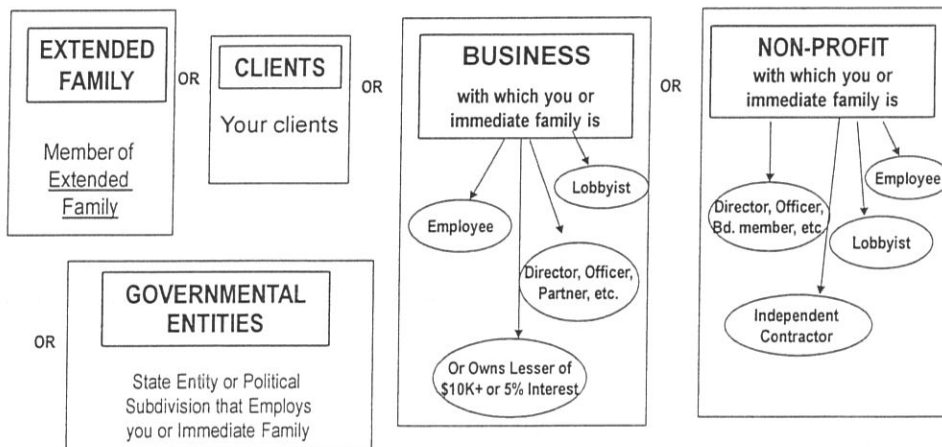
Direct pecuniary gain or loss to public servant, a person with which associated, or a direct pecuniary loss to a business competitor of the public servant, or a person with which associated.



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CONFLICT OF INTEREST: "FINANCIAL BENEFIT"

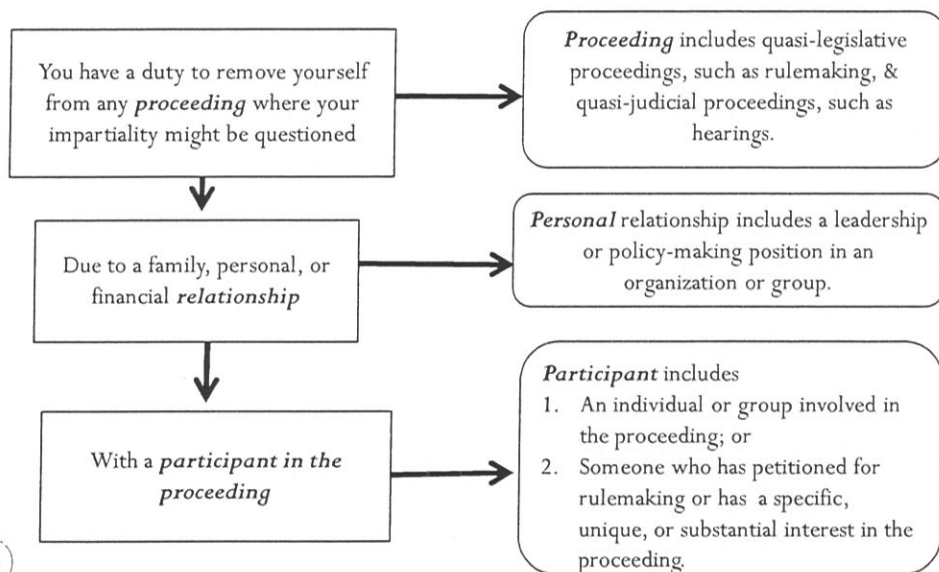
Public Servant may not participate in Official Action if Public Servant Knows that he/she or a Person With Which Associated:



May Incur a Reasonably Foreseeable Financial Benefit from the Official Action which Financial Benefit would Impair Public Servant's Independence of Judgment or It Could Be Reasonably Inferred that Benefit Would Influence Participation.

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CONFLICT OF INTEREST: RELATIONSHIP WITH "PARTICIPANT IN PROCEEDING"



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CONFLICTS OF INTEREST GENERALLY EXCLUDE FINANCIAL BENEFITS THAT ARE...

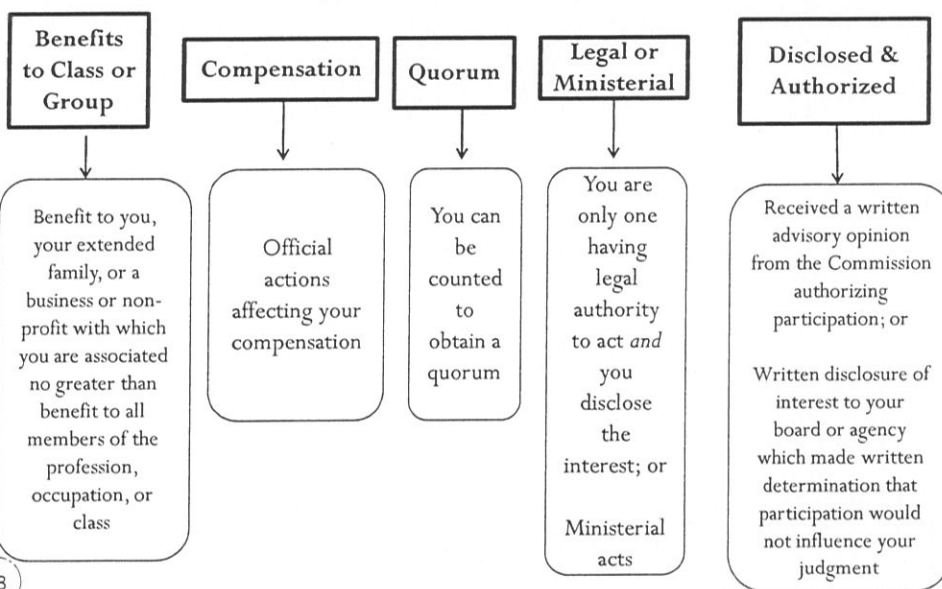
Available on same terms to other citizens of NC; or

Remote, tenuous, or speculative; or

Permitted under the "Safe Harbors" of G.S. 138A-38

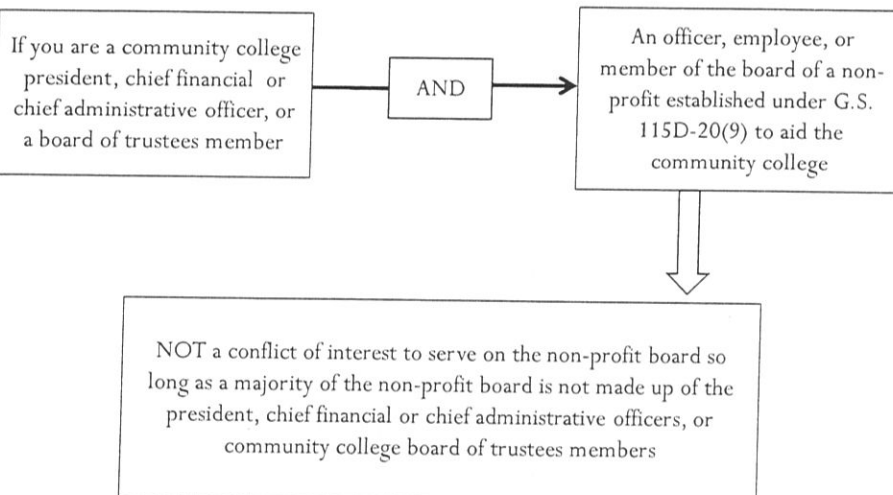
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WHEN CAN YOU TAKE OFFICIAL ACTION? "SAFE HARBORS" FOR PUBLIC SERVANTS



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COMMUNITY COLLEGE NON-PROFIT BOARDS



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What to do if you have a conflict of interest

DISCLOSE

Disclose the conflict in writing to your agency or board

RECUSE

- Do not take any written or verbal action
- Do not vote; **AND**
- Do not participate in discussions or deliberations

RECORD

Record recusal in board minutes

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ETHICS ACT CODE OF CONDUCT

OTHER PROHIBITIONS

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USE OF TITLE OR POSITION

Non-Governmental Advertising

- Cannot mention or allow another to mention your public position
- In non-governmental advertising advancing your or another's private interest

Exceptions: *

- Political advertising
- News stories or articles
- Directories or biographical listings
- Documents related to a meeting when the disclosure could be considered material by someone attending
- Charitable solicitations for 501(c)(3)

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State Funds for Public Service Announcements

Cannot use State funds for ads or public service announcements if

- Contain your name, picture, or voice; and,
- Appear on radio, TV, billboard or in magazine or newspaper

Exception : State or national emergency & announcement necessary to official duties

Does not apply to public TV or radio fundraisers

MISUSE OF CONFIDENTIAL & NON-PUBLIC INFORMATION

- Cannot use or disclose nonpublic information for personal financial interest of
 - You
 - Your extended family
 - Governmental unit with which you are associated
 - Business with which you are associated
 - Person with which you are associated
- Cannot improperly use or disclose confidential information

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HIRING OR SUPERVISING EXTENDED FAMILY MEMBERS

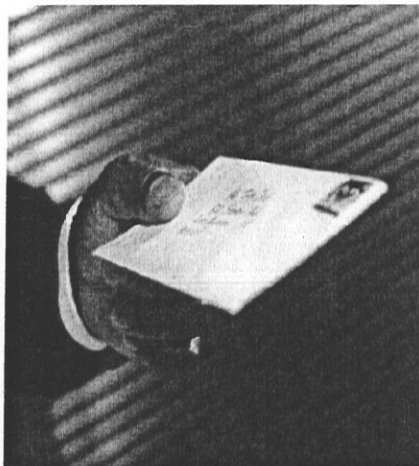
Unless specifically authorized,

- You cannot cause the employment, appointment, promotion, transfer, or advancement of extended family to State office or position which you supervise or manage
- You cannot participate in any disciplinary action relating to an extended family member

“Quid Pro Quo”

Other than what you receive from the State, you cannot knowingly, directly or indirectly:

- Accept, solicit, agree to receive, or assign anything of value
- For you or another person
- In exchange for being influenced in the discharge of your official responsibilities



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Honoraria

"Payment for services for which fees are not traditionally or legally required."

Cannot accept honorarium from *any outside source*, if ANY of the following apply:

Your agency reimburses you for travel, subsistence, or registration

You use your agency's work time or resources

Activity bears a reasonably close relationship to your official duties, i.e., "But for" being a public servant, you would not be performing the activity

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Additional Compensation. Other than what you receive from the State or what is approved by your agency, you are prohibited from soliciting or receiving personal financial gain for acting in your official capacity

Limitations on Charitable Solicitations. A public servant cannot solicit charitable donations from subordinate State employees

• **Exceptions:**

- Generic written solicitations to a class of subordinates
- Serve as honorary State Employees' Combined Campaign chair

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LOBBYING LAW

WHAT IS “LOBBYING” & WHAT IS THE CODE OF CONDUCT

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WHY THE LOBBYING LAW IS IMPORTANT TO PUBLIC SERVANTS

1. Executive Branch lobbying is regulated
2. State agencies must designate “liaison personnel” to lobby for legislative action
3. No Revolving Door for certain public servants and State agency employees

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LOBBYING LAW: First, what is NOT Lobbying?

- Communications or activities
- Part of a business, civic, religious, fraternal, personal, or commercial relationship *and*
- NOT connected to legislative or executive action

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LOBBYING LAW: WHAT IS "LOBBYING"?

Direct

Influencing or attempting to influence *legislative* or *executive* action through direct communications with a legislator, legislative employee, or public servant, *or* their immediate family.



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Goodwill

Developing goodwill, including building relationships, with a legislator, legislative employee, or public servant, or their immediate family with the intention of influencing current or future *legislative* or *executive action*.



What is “Executive Action”?

IS “Executive Action”

- Generally, *all* activities associated with making a policy, guideline, RFP, procedure, regulation, or rule by a public servant
 - Includes *preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, or rejection*

Is NOT “Executive Action”

- ✓ Contested case proceedings
- ✓ Communications involving permits, licenses, eligibility, or certification
- ✓ Inquiries regarding a benefit, claim, duty, etc.
- ✓ Inquiring about or responding to an RFP
- ✓ Ratemaking
- ✓ Internal & ministerial functions
- ✓ Public servant's communications concerning public comments made at an open meeting or submitted as a written comment, in response to a request for public comment

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LOBBYIST & LOBBYIST PRINCIPAL REQUIREMENTS

Registration

- ✓ Lobbyists must register with & pay fee to Secretary of State for each principal
- ✓ Principals must file an authorization with & pay fee to Secretary of State

Reporting

- ✓ Monthly while General Assembly is in session for legislative reportable expenditures
- ✓ Otherwise quarterly

Identification

- ✓ Lobbyists must identify themselves and principals prior to lobbying

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GENERAL PROHIBITIONS & RESTRICTIONS ON LOBBYISTS

1. No Contingency Fees
2. Gift Ban
3. No Use of Cash or Credit Unless Present
4. Cannot be Appointed by State Official to
Serve on Certain Boards & Commissions

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CAMPAIGN RESTRICTIONS ON LOBBYISTS

Lobbyists cannot

- Make campaign contributions to legislators & Council of State members or candidates for those offices
- Serve as Treasurer or Assistant Treasurer for political committee to elect legislator or Council of State member
- “Bundle” campaign contributions

No person (including lobbyist or lobbyist principal) can attempt to influence the action of public servant or legislator by promising financial support to candidacy or threatening financial support to opposition

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Exemptions from Lobbying Law

- Expression of personal opinions
- Appearing before a committee by invitation
- Government officials and employees (when in connection with public office and duties)
- Professional services (such as bill drafting)
- Media
- Designated individuals (public servants, legislators, legislative employees) acting in their official capacity
- Responding to inquiries
- Political committees & national political conventions

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“COOLING OFF” PERIODS

Legislators	Constitutional Officers & Principal Dept. Heads	State Agency Employees
Cannot register as a lobbyist: <ul style="list-style-type: none"> • While in office • Before the later of close of session in which serving or 6 months after leaving office 	Cannot register as a lobbyist <ul style="list-style-type: none"> • While in office • For 6 months after leaving office 	Former employee of State agency cannot register <ul style="list-style-type: none"> • To lobby the State agency that previously employed him or her • For 6 months after leaving the State agency Can register & lobby other agencies

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LOBBYING LAW

VIOLATION CONSEQUENCES

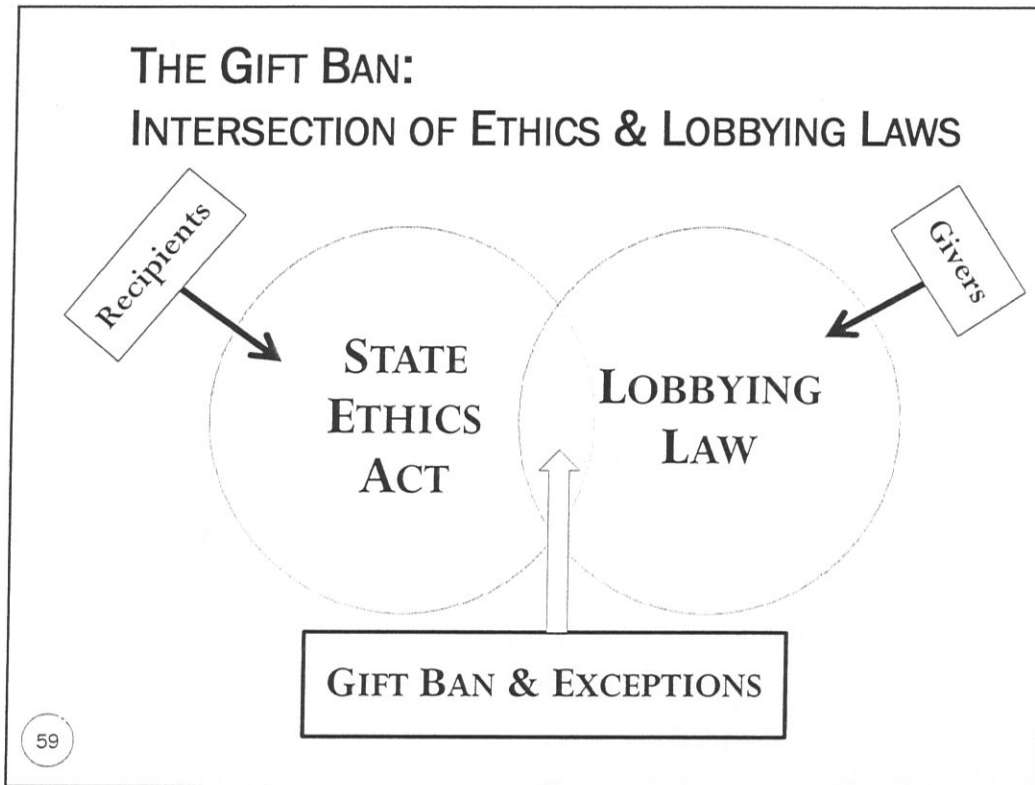
- Civil Penalty
- Depending on **type** of violation, may also be:
 - Class 1 Misdemeanor
 - Ban on lobbying for 2 years

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ETHICS ACT & LOBBYING LAW

NC's "GIFT BAN"

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NC's GIFT BAN

WHAT IS IT & WHEN DOES IT APPLY?

- You cannot accept a "*gift*," directly or indirectly, from a "*prohibited giver*"
 - Registered Lobbyist
 - Registered Lobbyist Principal
 - "Interested Person"
- Unless it is permitted under the State Ethics Act.
- Applies at all times and in all circumstances.

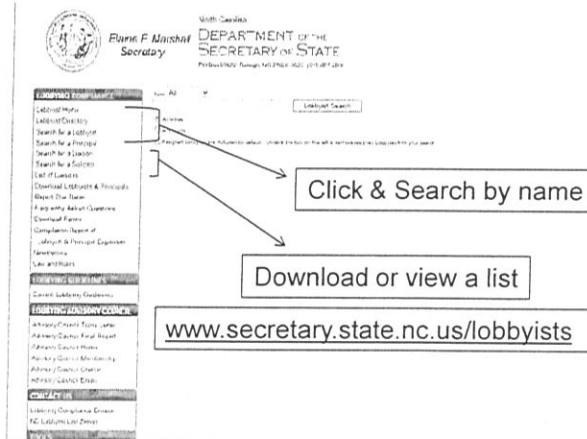
24/7/365!

HOW DO YOU KNOW...

1. If it's from a "prohibited giver"?
2. If it's a "gift"?
3. If there is an exception?

How do you know if someone is a “Lobbyist” or “Lobbyist Principal”?

- **Must register with the Secretary of State**
- **List available on Secretary of State’s website**



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How do you know if someone is an “Interested Person”

Persons who:

- **Business.** Are doing or seeking to do business with your agency or board; or,
- **Regulated.** Are engaged in activities that are regulated or controlled by your agency or board; or,
- **Financial.** Have financial interests that may be substantially & materially affected by the performance or nonperformance of your official duties.



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*There is no list of interested persons.
Duty is on you to determine if someone is an interested person as to your board or agency!*

NC's GIFT BAN

WHAT IS A "GIFT"?

- ✓ A gift is **anything of monetary value** that you receive from a prohibited giver



- ✓ *No de minimis exception!*

- ✓ *Value does not matter!*

- ✓ *A cup of coffee is a gift!*

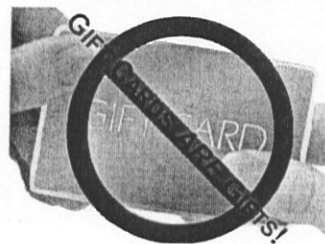


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NC's GIFT BAN

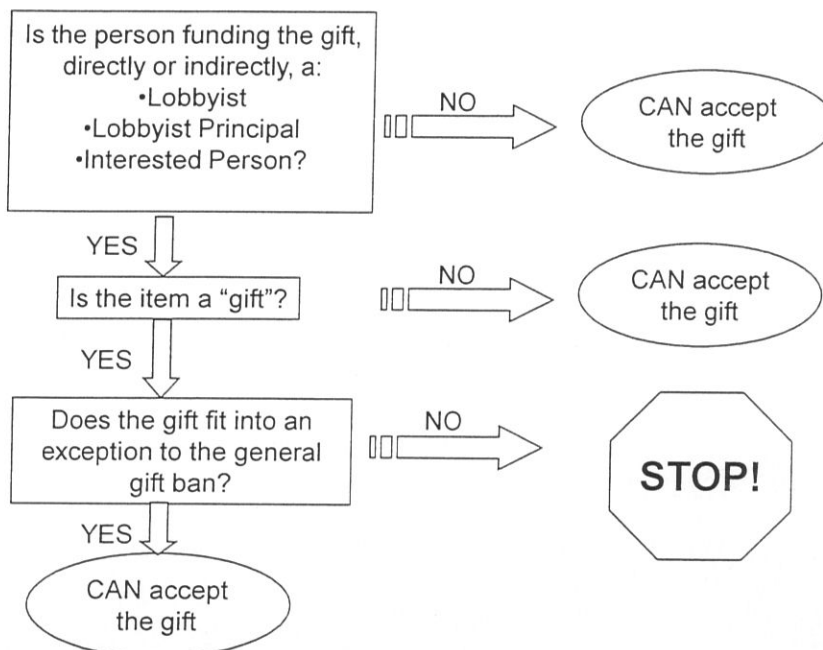
WHAT IS **NOT** A "GIFT"?

- ✓ Paid fair market or face value
- ✓ Commercially available loans made on same terms & not for lobbying
- ✓ Contractual or commercial arrangements not made for lobbying
- ✓ Academic or athletic scholarships
- ✓ Campaign contributions properly received & reported
- ✓ Certain expressions of condolence
- ✓ Cards, letters, notes, e-mails, etc (State Ethics Commission determination)



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DECISION TREE FOR GIFTS



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NC's GIFT BAN:

Are there exceptions?

Yes . . . BUT...

- Specific criteria must be met for each one
- Even if allowed, gifts generally must be reported usually by the prohibited giver
- Reports
 - Are filed with the Secretary of State
 - Generally include the **name** of the recipient & a **description** & **value** of the gift
 - Are public record

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GENERAL EXCEPTION CATEGORIES

- I. RECEPTIONS, MEETINGS & CONFERENCES GENERALLY
 - a) Receptions & Other Gatherings
 - b) Official Duties
 - c) Reimbursable Expenses
 - d) Certain Meetings & Conferences
- II. NONPARTISAN AGENCY ORGANIZATIONS
 - a) Meetings & Conferences
 - b) Gifts Directly to Non-Partisan Organizations
- III. INFORMATIONAL MATERIALS
- IV. BEHALF OF THE STATE OR RELATED TO STATE BUSINESS
- V. FAMILY, FRIENDS & OTHERS
 - a) Family
 - b) Other Relationships
 - c) Relationship with a Lobbyist Principal
 - d) Plaques & Nonmonetary Mementos
- VI. GENERAL PUBLIC
- VII. UNC ATHLETIC TICKETS

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I. RECEPTIONS, MEETINGS & CONFERENCES: *Receptions & Other Gatherings*

- Any prohibited giver can pay for
- Food & beverage for *"immediate consumption"* at

Open Meeting of Public Body

Gathering Open to the
General Public

- ✓ 10 or more attendees
- ✓ Sign or other communication
outside gathering indicating
open to the public

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Receptions & Other Gatherings

- Any prohibited giver can pay for
- Food & beverage for **immediate consumption** when 1 or more *from each* of the following groups are "invited":

- ✓ All House or Senate members;
- ✓ All members of county or municipal legislative delegation;
- ✓ Recognized caucus;
- ✓ Committee/commission of General Assembly;
- ✓ All legislative employees; or
- ✓ Public servant's entire board or at least 10 public servants.

And

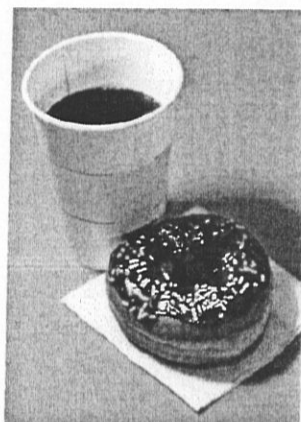
At least 10 people associated with host or sponsor actually attend; or all shareholders, employees, bd. members, officers, members, subscribers located in NC are invited.

"Invited" – written; at least 24 hrs. in advance; date, time, location; from at least 1 host or sponsor; if sponsored by lobbyist or lobbyist principal, must state whether gathering is permitted by this exception.

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I. RECEPTIONS, MEETINGS & CONFERENCES: Official Duties

- Lobbyist, lobbyist principal, interested person can pay for
- Food & beverage for **immediate consumption** at
- Gathering where
 - Public servant attendance **primarily related to public position; AND,**
 - 10 individuals other than public servant or immediate family attend



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I. RECEPTIONS, MEETINGS & CONFERENCES: *Reimbursable Expenses*

- Lobbyist, lobbyist principal, interested person
- Can pay for any expense that would otherwise be reimbursable by the State
- **SO LONG AS** you received approval in advance to accept the expense on behalf of the State
- Actual expense may exceed State rate

STATE OF NORTH CAROLINA
BUDGET MANUAL
OFFICE OF STATE BUDGET AND MANAGEMENT

Effective Date: July 1, 2009

Updated January 1, 2011

5.0 TRAVEL POLICIES AND REGULATIONS

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I. RECEPTIONS, MEETINGS & CONFERENCES: *Certain Meetings & Conferences*

- ✓ **Lobbyist principal ONLY.**
- ✓ Can pay reasonable actual expenditures for food & beverage, travel, registration, lodging, incidental items of nominal value, incidental entertainment.
- ✓ 1) "Educational" Meeting (primarily related to your public duties); or, 2) you are a speaker or panel member
- ✓ Meeting has formal agenda, notice given at least 10 days in advance and attended by at least 10 participants.
- ✓ Food, beverage, transportation & entertainment must be
 - Provided to all attendees or defined groups of 10 or more; and,
 - Part of or in conjunction with meeting
- ✓ Entertainment must also be incidental to the principal agenda

II. NONPARTISAN AGENCY ORGANIZATIONS: *Meetings & Conferences*

✓ **Lobbyist principal ONLY**

- ✓ Can pay **reasonable actual expenditures** for food & beverage, travel, registration, lodging, incidental items of nominal value, incidental entertainment
- ✓ **Attendance at meeting**
 - ✓ As member of board, agency, or committee of
 - ✓ Non-partisan organization of which public servant's agency is a member *or* public servant is a member because of public position

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- ✓ Meeting has **formal agenda**, notice given at least 10 days in advance and attended by at least 10 participants
- ✓ Food, beverage, transportation & entertainment must be
 - Provided to all attendees or defined groups of 10 or more; and,
 - Part of or in conjunction with meeting
- ✓ Entertainment must also be incidental to the principal agenda

II. NONPARTISAN AGENCY ORGANIZATIONS: *Gifts Directly to Organization*

Gifts are allowed if they are:

- Made by a **lobbyist** or **lobbyist principal** (not an interested person) to
- **Nonpartisan** state, regional, national, or international organization of which
- Your **agency is a member**; or
- **You are a member** or participant by virtue of your **public position**

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III. INFORMATIONAL MATERIALS

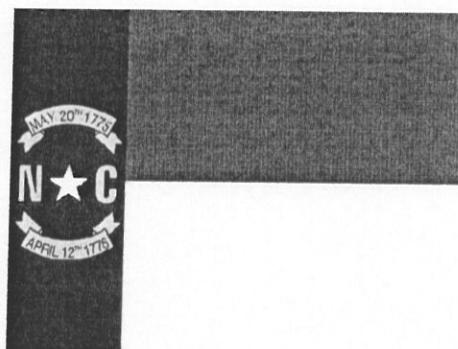
- You may accept *informational materials relevant to your public duties* from any prohibited giver



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IV. BEHALF OF THE STATE

- Lobbyist, lobbyist principal, or interested person
- May pay for gifts accepted on behalf of the State
- For use by and benefit of the State



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RELATED TO STATE BUSINESS

Industry & Tourism Related. Food, beverage, transportation, lodging, entertainment, or related expenses if

- Gift not otherwise subject to an exception
- Public servant is responsible for conducting industry recruitment, international trade, or tourism promotion
- Gift was not solicited or accepted in exchange for performing public duties
- Gift is reported to the State Ethics Commission

Cultural Protocol. Gift

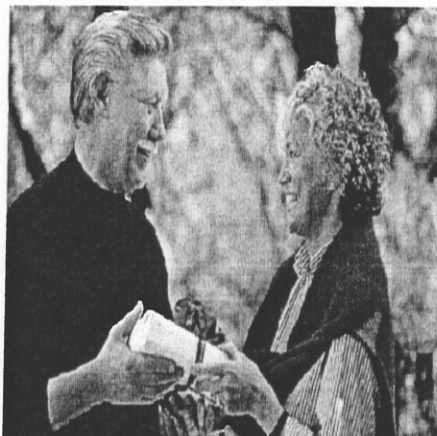
- Valued at less than \$100
- Given in accordance with cultural protocol
- As part of overseas trade mission

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V. FAMILY, FRIENDS & OTHERS

Extended Family

You may accept gifts from your *extended family* even if the family member is a prohibited giver



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V. FAMILY, FRIENDS & OTHERS: *Other Relationships*

Gifts based on business, civic, religious, fraternal, personal, or commercial relationship permitted if:

- ✓ Relationship not based on public position; and,
- ✓ Reasonable person would conclude not given for "lobbying"



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V. FAMILY, FRIENDS & OTHERS: *Relationship with Lobbyist Principal* *"Eat your own lunch"*

- If **you** are a director, officer, board member, employee or independent contractor of a lobbyist principal *or* a 3rd party that received funds from the lobbyist principal
- **Lobbyist principal only** (not lobbyist) may pay for
- **Food & beverage for immediate consumption, & related transportation**
- **At conference, meeting, similar event**
- **Available to all attendees of same class**



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V. FAMILY, FRIENDS & OTHERS:

Plaques & Non-Monetary Mementos

You may accept a plaque or similar non-monetary memento recognizing your service in a field or specialty or to a charitable cause



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VI. GIFTS TO GENERAL PUBLIC OR ALL STATE EMPLOYEES

You may accept

- Anything made available to the general public or all State employees
- By a Lobbyist or Lobbyist Principal

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VII. UNC ATHLETIC TICKETS

- UNC Board of Governors, UNC constituent institutions, or their legislative liaisons
- Cannot give public servants, legislators, or legislative employees
- Athletic tickets
- For lobbying

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“UNGIFTING”

WHAT TO DO IF YOU RECEIVE AN IMPERMISSIBLE GIFT



PROMPTLY

- Decline it
- Return it
- Pay Fair Market Value for it
- Donate it to charity or to the State

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REMINDER ABOUT REPORTING

- Gifts are reported
- Generally includes name, description & value of gift
- Generally reports are made by giver
- **But are 2 instances when reporting requirement is on you.....**

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REPORTING REQUIREMENTS FOR PUBLIC SERVANTS

What & Value	Reportable expenditure valued over \$200/calendar quarter	Scholarship (grant-in-aid to attend meeting) valued over \$200/calendar quarter
From	Person ■ Outside NC ■ Not required to register	Person ■ Outside NC ■ Not required to register
Why	Made for lobbying	Scholarship related to public service or position
Where Accepted	You were outside NC when accepted	You were either in NC or outside NC
Reporting	You must report date, description, name of person, & estimated FMV either to Secretary of State or on SEI	You must report date, event, name of person granting scholarship, & estimated FMV either to Secretary of State or on SEI

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ETHICS ACT

COMPLAINTS & CONSEQUENCES

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COMPLAINTS

- *Anyone* can file an ethics complaint against you
- The complaint must
 - Be in writing
 - State specific facts alleging a violation of law and when the alleged violation occurred
 - Be signed & sworn
 - Be filed within 2 years.


STATE ETHICS COMMISSION
COMPLAINT FORM

Official Use Only:
Date Received _____
Case Number _____
Type of Official _____

The State Ethics Commission has the authority to investigate complaints against those persons covered by Chapter 135A, North Carolina General Statutes, "The State Government Ethics Act," for alleged violations of the Act. Please use section 135A-12 of the act. This complaint must be filed within two years of the date you, the Complainant, knew or should have known of the conduct upon which this complaint is based. Please note that the Ethics Commission does not have jurisdiction over all public officials or state employees.

CONTACT INFORMATION
Please Type or Print clearly

The Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Commission cannot accept anonymous complaints.

Printed Name _____
Address _____
City _____ State _____ Zip _____

4. If possible, check the majority provision you believe is violated. Indicate other as appropriate.

Chapter 135A, the State Government Ethics Act, for:
 _____ use of public position for private gain - covered persons and legislative employees (§135A-11)
 _____ receipt of a prohibited gift (§135A-21)
 _____ receipt of other compensation - public servants and legislative employees (§135A-31)
 _____ use of confidential information for private gain - public servants & leg. employees (§135A-34)
 _____ conflict of interest while performing official duties - public servants (§135A-36)
 _____ outside of time not solely related to business activities - legislative (§135A-37)
 _____ Other (specify, explain): _____

SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that the information provided in this complaint is true, correct, complete, and of my own personal knowledge, and I believe the information to be true based upon _____

Signature _____ Date _____

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NOTICE

- You will be notified immediately upon the Commission's receipt of a written allegation of unethical conduct

STATE ETHICS COMMISSION
1324 MAIL SERVICE CENTER
RALEIGH, NC 27609 1324
WWW.ETHICSCOMMISSION.NC.GOV

CONFIDENTIAL

Inquiry Notification Form

Upon receipt by the State Ethics Commission of a written allegation of unethical conduct by a covered person or legislative employee, or upon the initiation by the Commission of an inquiry into possible unethical conduct, the Commission must notify the covered person or legislative employee about whom the inquiry was made. North Carolina General Statutes § 135A-12(a)(1). Pursuant to this law, the Commission is hereby providing you with a copy of such a request or initiation.

At this time, the Commission has not made any determination as to the validity of this attempted complaint and has not initiated a formal inquiry pursuant to section 135A-12 of the State Government Ethics Act. If the Commission determines that the alleged facts are sufficient to initiate a formal inquiry to determine whether there is probable cause of a violation of the Ethics Act or other applicable laws, you will be so notified.

THIS CONFIDENTIAL NOTICE IS FOR INFORMATIONAL PURPOSES ONLY. A FORMAL INQUIRY BY THE COMMISSION HAS NOT BEEN INITIATED AT THIS TIME.

The following is a general summary of the attempted complaint:

Requester: _____

Subject: _____

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COMMISSION'S JURISDICTION

Broader than just the State Ethics Act

The Commission is required to conduct inquiries into:

- Application or violation of the State Government Ethics Act
- Alleged violations of the criminal law by covered persons in the performance of their official duties
- Alleged violations of G.S. 126-14 (Promise or threat to obtain political contribution or support)
- For legislators, the application of alleged violations of the Legislative Ethics Act

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CONFIDENTIALITY

Complaints, responses, and other investigative documents related to the inquiry are **confidential, unless:**

- Respondent requests that records be made public, i.e., waives confidentiality
- A hearing commences; or,
- Sanctions are recommended without a hearing



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AFTER A COMPLAINT IS FILED

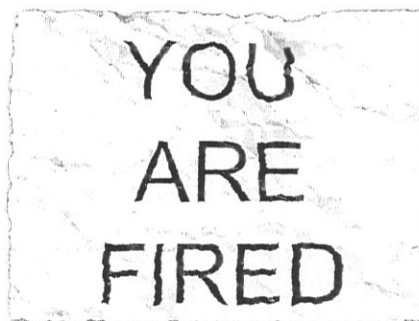
1. **Preliminary Inquiry**
2. **Probable Cause Determination**
3. **Hearing or Referral.** If probable cause is found,
 - For public servants, open hearing before the State Ethics Commission



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CONSEQUENCES

- Willful noncompliance considered violation of written work order and may be fired
- Mifeasance, malfeasance, or nonfeasance and may be removed from public position
- Reminder – additional civil and criminal penalties may apply for SEI violations



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ETHICS ACT

WHERE & HOW TO GET ADVICE

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STATE ETHICS ACT QUESTIONS

- **WHO** can ask for an opinion for you or about you?
- **WHAT** can you ask for, **WHAT** are the differences, & **WHAT** do you get?
- **WHERE** do you send your questions?
- **WHEN** should you ask?
- **WHY** should you ask?

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WHO CAN ASK?

1. You
 2. Your supervisor if a covered employee
 3. Your appointing authority
 4. Your legal counsel
 5. Your agency's Ethics Liaison
 6. State Auditor's Office
- State Ethics Commission can also issue advisory opinions on its own motion

Unless authorized by statute, Commission does not issue advice or advisory opinions to third parties

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WHAT can you ask for?

- Informal advice from Commission staff
- Formal advisory opinions from the State Ethics Commission
- Both are confidential & not public record
 - Including your identity, the existence of the request, and any information related to it
 - Redacted formal advisory opinions are published on the Commission's website

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WHAT ARE THE DIFFERENCES?

INFORMAL ADVICE	FORMAL ADVISORY OPINION
Request can be written or by phone	Request <u>must</u> be in writing
Confidential	Confidential
■ Issued by Commission staff ■ No immunity	■ Issued by Commission. ■ Confers immunity.
Not published	Published in redacted form within 30 days of issuance by the Commission.

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WHAT is “Immunity”

By following the advice in a formal advisory opinion,
you are immune from:

- Investigation by the State Ethics Commission.
- Disciplinary action in your job or removal from your public position
- Investigation by the Secretary of State’s office

No immunity for violations of criminal law in the
performance of your official duties.

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WHERE DO YOU SEND YOUR QUESTIONS?

STATE ETHICS COMMISSION

Call: (919) 715-2071
Fax: (919) 715-1644
E-mail: ethics.commission@doa.nc.gov
Mail: 1324 Mail Service Center
 Raleigh, NC 27699-1324
Hand Deliver: 424 N. Blount St.
 Raleigh, NC 27601

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WHEN should you ask?

- Anytime you are unsure about what you should do
- Must be before the situation occurs!
- Requests for advice and formal advisory opinions must relate prospectively to real or reasonably anticipated fact settings or circumstances

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WHY should you ask?

- Avoid trouble BEFORE it happens – *an ounce of prevention is worth a pound of cure*
- Obtaining a formal advisory opinion grants you immunity
- Violations can result in disciplinary action up to and including dismissal or removal from your public position

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ADVICE FOR LOBBYISTS, LOBBYIST PRINCIPALS & GOVT. LIAISONS

- “Any person affected” by lobbying law can request
- Both formal advisory opinions and informal advice
- Formal advisory opinion confers immunity
- Same confidentiality and publication provisions, *except* must share unredacted copy with Secretary of State

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ETHICS ACT

AND ONE LAST THING...

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OTHER LAWS, RULES, POLICIES

Gifts to & from Contractors

- By law, generally anyone involved in the contracting process cannot accept gifts or favors from contractors or subcontractors
- Executive Order 24 extends prohibition to employees in Cabinet agencies & Governor's Office
- Executive Order 34 extends prohibition to Governor's appointees to boards and commissions



EXECUTIVE ORDER NO. 24 REGARDING GIFTS TO STATE EMPLOYEES

WHEREAS those in State government who do the work of the public and citizens will ensure that they will reflect the ethical standards that are essential to maintaining the public's trust; and

WHEREAS N.C. Gen. Stat. 15A-272 states it is the duty of a State employee to withhold himself or herself from any position that is incompatible with the duties of the State agency of the State employee or involved in a proprietary plant, special service, or contract, or public enterprise; (2) receiving or attempting to receive any gift, bribe, or other thing of value; and



EXECUTIVE ORDER NUMBER 34 ETHICS AND ATTENDANCE STANDARDS FOR GUBERNATORIAL APPOINTEES TO BOARDS

WHEREAS, the Governor appoints members to various boards, commissions, committees, councils, and similar bodies (hereinafter "boards"); and

WHEREAS, it is essential for the public and the Governor to have confidence in the members of boards and the work done by such boards; and

WHEREAS, gubernatorial appointees to boards must maintain the highest ethical and

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➤ Prohibition on Self-Dealing

- Cannot benefit from or influence public contracting

➤ Other Agency & Departmental Statutes

- Some agencies have specific ethical requirements in their statutes

➤ Other Agency & Departmental Policies

- State Ethics Act authorizes agencies to adopt additional ethical standards
- Governor is also authorized to adopt additional ethical standards for State agency employees & gubernatorial appointees

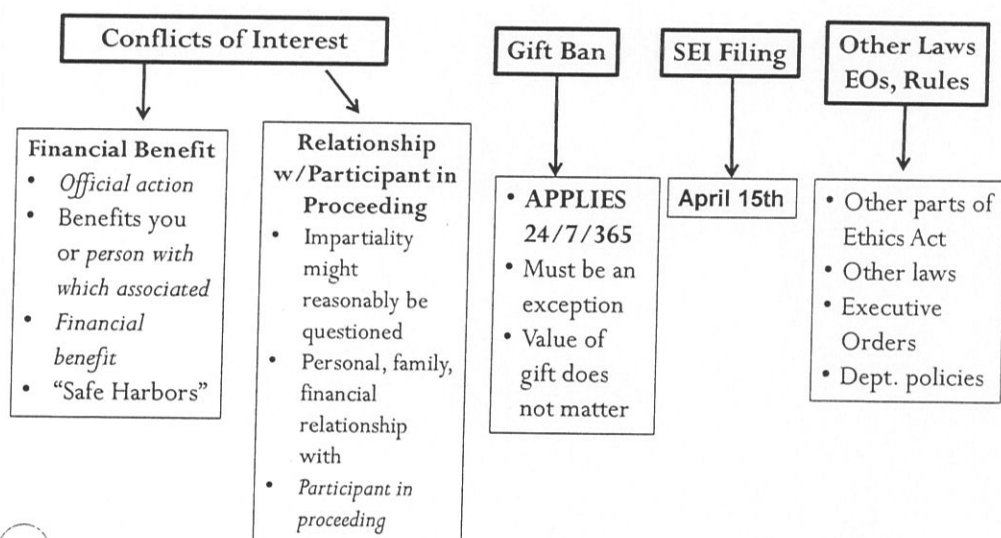
106

CONCLUSION

WRAP UP, HYPOTHETICALS & KEY POINTS TO REMEMBER

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WRAP UP...



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What if.....

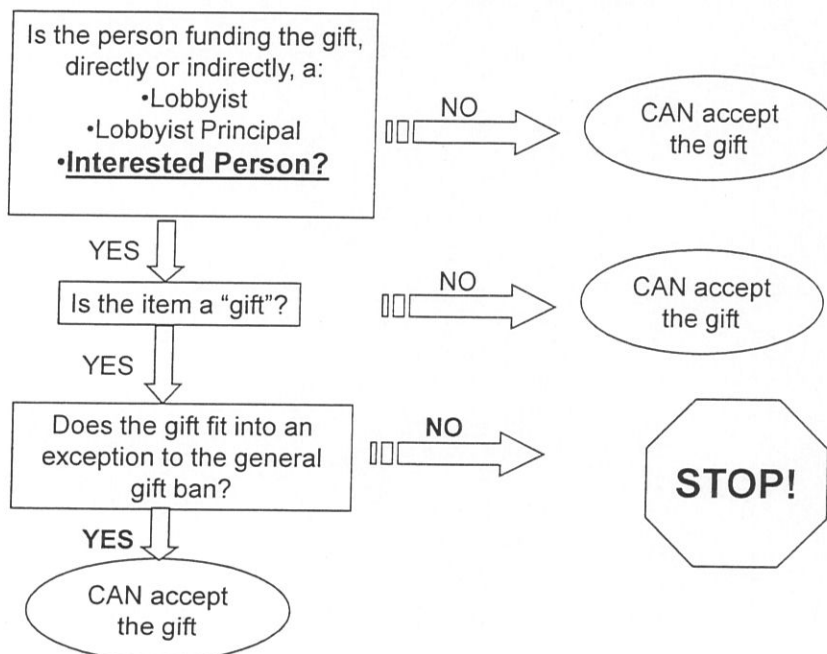
- You arrive at your office and find an ink pen in a box in your chair.
- Can you keep it?



Upon opening the box, you find a note enclosed with the pen indicating it is from a company that is licensed by your agency.

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DECISION TREE FOR GIFTS



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What if....

You've been invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

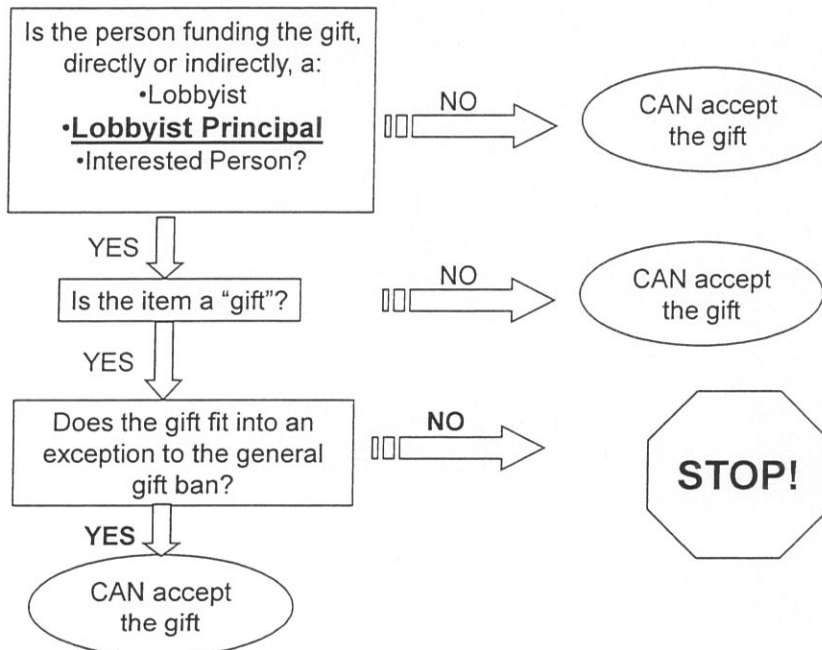
If so, can you eat and drink?



Upon reading the invitation, you realize the lobbyist principal is not regulated by and has no interests before your agency.

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DECISION TREE FOR GIFTS



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What if...

You are a public servant and your husband owns a business which will financially benefit from a proposed rule change that is scheduled to be voted on by the state board you sit on.

Can you participate in the discussion of the proposed rule change?

Can you vote on it?



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1. Are you taking "official action"?

Yes

Voting & deliberations
or discussions are
"official action"

2. Will you or a "person with which associated" benefit?

Yes

"Person with which associated" includes
"Business with which associated"
includes a business where your spouse is
employed, holds a certain interest, is an
officer, or lobbyist

3. Is it a "financial benefit"?

Yes

Direct pecuniary gain to
"person with which
associated"

Determine if
there is a Safe
Harbor

If not, Disclose,
Recuse, Record

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KEY POINTS TO REMEMBER:

- Remember Code of Conduct
- Remember the gift ban applies at all times!
- Ask for advice BEFORE taking action you think may be a violation
- Get to know your Ethics Liaison & agency legal counsel

**If you have questions or need advice,
contact the
State Ethics Commission!**

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STATE ETHICS COMMISSION CONTACT INFORMATION

- **MAILING ADDRESS**

1324 Mail Service Center
Raleigh, NC 27699-1324

- **STREET ADDRESS**

424 N. Blount Street
Raleigh, NC 27601-1010

- **PHONE & FAX**

Phone: 919-715-2071
Fax: 919-715-1644

- **E-MAIL:**

- SEI Questions: SEI@doa.nc.gov
- Education Questions: Education.Ethics@doa.nc.gov
- Advice & Advisory Opinion Requests: ethics.commission@doa.nc.gov

- **WEBSITE:** www.ethicscommission.nc.gov



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